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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.2.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) Nos.81 & 82 of 2006

The Commissioner of Income Tax-I,
Chennai .. Appellant in both the T.Cs.

Vs.

M/s.Carborandum Universal Ltd.,
29 Rajaji Salai,
Chennai-600 001 .. Respondent in both the T.Cs.

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 19.11.2004 in ITA Nos.2266 and 2267/Mds/96 for the assessment years 1994-95.

For Appellant : Mr.J. Narayanaswamy

J U D G M E N T

(Delivered by P.P.S.JANARTHANA RAJA,J.)

The above tax case appeals are directed against the order of the Income-tax Appellate Tribunal in ITA Nos.2266 and 2267/Mds/96 dated 19.11.2004, raising the following substantial questions of law:

"1. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition towards the element of the customs duty on the closing stock.

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2. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition towards the element of the customs duty on the closing stock.

3. Whether on the facts and circumstances of the case the tribunal was right in holding that the interest paid on the borrowed capital prior to the commencement of the production was allowable as revenue expenditure."

2. The Revenue is the appellant. The assessment year involved in the appeals is 1994-95. The assessee filed a return of income on 28.11.1994, showing the total income at Rs.3,50,25,940/-. The case was processed on 7.4.95 determining the total income at Rs.3,51,67,020/-. During the accounting year under consideration, the assessee has started 3 projects viz., Hydel Project, Bonded expansion project and EMD expansion project. The assessee had incurred substantial amount of capital expenditure on the establishment of the above projects. For the purpose of incurring capital expenditure in the project, the assessee borrowed funds from outside and paid interest at Rs.2,39,61,676. The interest amount of Rs.2,39,61,676/- was capitalised by the assessee in the books. However, while computing the income for the purpose of income tax, the assessee claimed to the extent of Rs.2,39,61,676/-, as revenue expenditure. The Assessing Officer made disallowance of interest relating to the three new projects by relying on the ratio of the Supreme Court in the case of Chellapalli Sugars reported in 98 ITR 574, on the ground that the interest was paid before the commencement of the production and the same was capitalised and not allowed as revenue expenditure. Further, the Assessing Officer included the Excise and Customs duty in the value of the closing stock.

3. Aggrieved by the said order, the assessee filed appeal to the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals), allowed the appeal partly. Hence, both the Revenue and the assessee preferred appeals before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal allowed both the issues in favour of the assessee.

4. The issue involved in questions 1 and 2 is covered against the Revenue by the decision of this Court in the case of COMMISSIONER OF INCOME TAX Vs.ENGLISH ELECTRICT CO.OF INDIA LTD.(243 ITR 512). Hence the order of the Tribunal is in confirmity with law.

5. In respect of Question No.3, the assessee claimed deduction under Section 36(1)(iii) of the Act, which reads as follows:

"36(1)(iii) The amount of the interest paid in respect of capital borrowed for the purposes of the business or profession"

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From a very reading of the above clause, it is clear that three conditions are required to be specified to enable the assessee to claim deduction in respect of interest on borrowed money, which are as follows:

1. There should be borrowal of money by the assessee;
2. It must be for the purpose of business; and
3. The interest must be paid on the borrowed money.

In this case, both the authorities below had given a concurrent finding that the assessee borrowed money for the purpose of expansion of the projects and paid interest on the borrowed money. Hence, the claim of the assessee under Section 36(1)(iii) of the Act is in confirmity with law.

6. In view of the foregoing conclusions, we do not find any error or infirmity in the order of the Tribunal and no substantial questions of law arise for consideration of this Court. Hence, we dismiss the above tax cases. No costs.

msk

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Assistant Registrar,Income Tax
   Appellate Tribunal,
   Rajaji Bhavan, Besant Nagar, Chennai-90.

2. The Commissioner of Income Tax
   (Appeals) V, 121, Mahatma Gandhi
   Road, Chennai-600 034.

3. The Deputy Commissioner of Income-tax,
   Spl. Range I, Madras.

+1 CC to Mr.Pushya Sitaraman, Advocate, SR No.4823

AK(CO)
BG/27.2.2006

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